
To: Mayor and City Council Members

From: Interim City Administrator

Recommendation: Approval of the Amended and Restated Market Purchase Program Agreement

Background

The Market Purchase Program Agreement (the "MPP Agreement") was made effective August 1, 2007, by and among Northern California Power Agency ("NCPA"), City of Biggs (the "City") and other NCPA members, to enable NCPA, on behalf of the City, to engage in Contract Transactions to purchase Energy for the benefit of the City's customers. Since its inception the Market Purchase Program ("MPP") has operated successfully for the benefit of the City.

Issue

Due to the changing landscape of the wholesale electric market, including new regulatory obligations, the City has requested NCPA to revise the MPP Agreement to enable NCPA to transact new products that are currently not available under the MPP Agreement. As a result NCPA has developed the Amended and Restated Market Purchase Program Agreement (the "Amended MPP Agreement") to enable certain new Approved Products requested by the City. The Amended MPP Agreement will enable NCPA to engage in Contract Transactions, on behalf of the City, to purchase and sell Approved Products. Approved Products, as defined in the Amended MPP Agreement, includes Energy, Resource Adequacy Capacity, Renewable Energy Certificates ("RECs"), GHG Compliance Instruments and Physical Option Products. The City, through Contract Transactions authorized under the Amended MPP Agreement, seeks to assure greater rate and budget stability by: (i) reducing the proportion of Energy that the City needs to acquire in a potentially volatile spot market; (ii) transacting in bundled and unbundled RECs to manage the City's renewable energy portfolio; (iii) satisfying applicable resource adequacy requirements more efficiently, and (iv) satisfying applicable GHG emission compliance obligations more efficiently.

Amended and Restated Market Purchase Program Agreement

The Amended MPP Agreement will enable NCPA to engage in Contract Transactions through the purchase and sale of Approved Products on behalf of the City. The Amended MPP Agreement specifies the terms and conditions under which NCPA will perform such services. The Amended MPP Agreement establishes the process NCPA will use to consummate Contract Transactions, lists the Transaction Instruments that NCPA may use to execute Contract Transactions, and contains the process for delivery and/or receipt of Approved Products. The Amended MPP Agreement also includes various provisions related to the City's financial obligations, including Security Deposit requirements, attributed to its Subscription Percentage in a Contract Transaction. A summary of the proposed revisions that are incorporated in the Amended MPP Agreement is attached to this staff report as Attachment A for your reference. The Amended MPP Agreement is on file for your reference.

Fiscal Impact

The City, as a signatory to the Amended MPP Agreement, will be responsible to pay to NCPA each month the sum of the following: (i) Fixed MPP Costs of \$900, (ii) one-twelfth of the City's allocated share of Variable MPP Costs calculated in accordance with the agreement, (iii) transaction specific costs for the City's Contract Transactions, and (iv) commodity costs for the City's Contract Transactions. In addition to the aforementioned monthly payment obligations, the City is obligated to fund: (i) the City's share of any and all required Security Deposits calculated in accordance with the agreement, and (ii) the City's share of working capital requirements for the MPP maintained at NCPA as set forth in the NCPA Annual Budget.

Environmental Analysis

This activity would not result in a direct or reasonably foreseeable indirect change in the physical environment and is therefore not a "project" for purposes of Section 21065 the California Environmental Quality Act. No environmental review is necessary.

Recommendation

The City staff recommends that the City Council provide authority to the mayor of the City of Biggs to execute the Amended and Restated Market Purchase Program Agreement on behalf of the City.

Respectfully submitted,

Tom Lando
Interim City Administrator
Attachments (2)

The agreement itself is 80 plus pages and will be sent to you electronically

Attachment A

Summary of Revisions to the Market Purchase Program Agreement

The following is a summary of the proposed revisions to the Market Purchase Program Agreement, organized by Agreement section:

General Modifications

- The Agreement has been modified to enable the purchase **and sale** of Approved Products
 - Energy
 - Resource Adequacy Capacity
 - Renewable Energy Certificates
 - GHG Compliance Instruments
 - Physical Option Products
- The procurement process and requirements have been decomposed into various sections in the Agreement; each such section is described below
- Multiple formatting changes have been made throughout the Agreement

Section 1 – Definitions

- Revised several definitions in Section 1
- Added new definitions in Section 1, including for example:
 - Approved Products
 - Auction
 - Bilateral Agreement
 - Cap and Trade Program
 - Commodity Revenues
 - Contract Transaction
 - Physical Option Products
 - Replacement Commodity Costs
- Deleted some existing definitions in Section 1

Section 2 – Effectiveness of Agreement

- The Agreement is set to become effective on the first day of the month following the Effective Date

Section 3 – Authority

- Added Section 3 to clarify the authorities provided to NCPA and the Participants under the Agreement

Section 4 – Transaction Conditions

- The conditions that must be met prior to consummating a Contract Transaction have been consolidated into Section 4, specifically:
 - All Contract Transactions must be made in accordance with the NCPA Risk Management Policies and Regulations, are limited only to the Approved Products listed in the NCPA Risk Management Policies and Regulations, and may not exceed the Maximum Contract Price

- The “Net Short” provisions have been removed from the Agreement because the Net Short protection is enforced through the NCPA Risk Management Policies and Regulations

Section 5 – Transaction Instruments

- Section 5 has been added to the Agreement to identify the types of Commission-approved Transaction Instruments that are enabled to be used to consummate Contract Transactions:
 - Master Agreements
 - EEI & WSPP Agreement
 - Bilateral Agreements
 - Exchanges
 - Auctions

Section 6 – Transaction Process and Participant Subscription to a Contract Transaction

- Section 6 has been modified to include the process NCPA will use to enter into Contract Transactions, including both NCPA and the Participants’ obligations (e.g. Contract Transaction Participant Authorizations)
- Expanding the options under which Contract Transactions may be initiated:
 - Through use of a RFP, or in response to a RFP
 - Through use of direct and/or bilateral negotiations with a Third Party or Participant
 - On a Commission-approved Exchange or Auction
- Clarified the roles and responsibilities of the Designated Representative and the Participants’ Principal Counsel so that Designated Representatives are approving the Contract Transaction, and the Principal Counsel is approving the Contract Transaction as to form, process and procedure

Section 7 – Delivery and Receipt of a Contract Transaction

- Section 7 includes new rules associated with the delivery and receipt of Contract Transactions, including Participants’ obligations to delivery Approved Products to NCPA to support a sale made by NCPA on behalf of a Participant
- New language has been added to Section 7 to address the situation where a Participant fails to provide Approved Products that have been sold by NCPA
 - The language includes the authority for NCPA to procure replacement products to fulfill the sales obligation, and such costs will be allocated to the defaulting Participant
 - Language has also been added to describe the process used to transfer RECs and GHG Compliance Instruments purchased/sold under the MPP

Section 8 – Cooperation and Further Assurances

- Minor language modifications/clarifications

Section 9 – Financial Obligations, Invoicing and Security Deposit Administration

- Added language to allow NCPA/Participants to adjust the Fixed MPP Costs rate based on NCPA’s annual budget and respective program efforts
- The Variable MPP Costs calculation was simplified, and will now include volumes for all Approved Products, not just Energy

- All Security Deposits required under the Agreement will be held as committed funds in NCPA's GOR, and Participants may commit uncommitted funds in the GOR to meet their Security Deposit obligations through use of a Irrevocable Letter of Direction
- The calculation of the Initial Security Deposit requirement will now be based on the three (3) highest months of Commodity Costs for all Approved Products, not just Energy
- Added language to prohibit the use of Commodity Revenues as/or to offset Security Deposit requirements
- Added new authority in the Agreement to enable NCPA to request Participants to provide Additional Security Amounts that are in excess of the three (3) month Security Deposit requirement; to cover other obligations that may be imposed on NCPA due to the expansion of Approved Product types
- Clarified which Contract Transactions are or are not used to calculate a Participant's financial obligations under the Agreement
- Other minor language modifications

Section 10 – Administration of Agreement

- Minor language modifications/clarifications

Section 11 – Admission and Withdrawal of Participants

- Added language to Section 11 to clarify a Withdrawing Participant's continuing obligations under Section 14.3.2 of the Agreement and to Deposit Security with NCPA for any outstanding Contract Transactions beyond the two (2) year period in which the Participant officially withdraws from the Agreement

Section 12 – Term and Termination

- The Term of the Agreement includes an Initial Term of five (5) years, and an automatic renewal for two (2) year increments thereafter

Section 13 – Default and Remedies

- Minor language modifications/clarifications

Section 14 – Miscellaneous

- Modified the Participant liability provisions of the Agreement to include both several and joint liability. Each Participant will effectively have a several liability for their respective Contract Transaction, but to the extent a Participant defaults, all non-defaulting Participants will have a joint liability for such default
 - This provision have been added to the Agreement to address cross member risk concerns, and is consistent with the provisions of the Natural Gas Program Agreement
- Added language to enable amendments to the Exhibits of the Agreement based on NCPA Commission action; no individual Participant governing body approval will be required for such amendments
- Added other miscellaneous provisions, including:
 - Venue
 - Attorneys' Fees
 - Interpretation
 - No Third Party Beneficiaries

Exhibits

- Added a new Participant Authorization for Resource Adequacy
- Added a new Participant Authorization for RECs
- Added a new Participant Authorization for GHG Compliance Instruments
- Added new Exhibits to list the Commission-approved:
 - Master Agreements
 - Bilateral Agreements
 - Exchanges
 - Auctions
 - Brokers
- Added a new Exhibit containing a Irrevocable Letter of Direction for GOR deposits
- Removed NCPA's pro forma RFP from the Exhibits

RESOLUTION NO. 2012-12

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BIGGS
APPROVAL OF THE AMENDED AND RESTATED MARKET
PURCHASE PROGRAM AGREEMENT**

WHEREAS, the Market Purchase Program Agreement (the “MPP Agreement”) was made effective August 1, 2007, by and among Northern California Power Agency (“NCPA”), City of Biggs (the “City”) and other NCPA members, to enable NCPA, on behalf of the City, to engage in Contract Transactions to purchase Energy for the benefit of the City’s customers; and

WHEREAS, due to the changing landscape of the wholesale electric market, including new regulatory obligations, the City has requested NCPA to revise the MPP Agreement to enable NCPA to transact new products that are currently not available under the MPP Agreement; and

WHEREAS, to satisfy this request, NCPA, working in coordination with the City, has developed the Amended and Restated Market Purchase Program Agreement (the “Amended MPP Agreement”) to enable certain new Approved Products requested by the City; and

WHEREAS, the Amended MPP Agreement will enable NCPA to engage in Contract Transactions, on behalf of the City, to purchase and sell Approved Products, which include Energy, Resource Adequacy Capacity, Renewable Energy Certificates (“RECs”), GHG Compliance Instruments and Physical Option Products; and

WHEREAS, the City through Contract Transactions authorized under the Amended MPP Agreement, seeks to assure greater rate and budget stability by: (i) reducing the proportion of Energy the City needs to acquire in a potentially volatile spot market; (ii) transacting in bundled and unbundled RECs to manage the City’s renewable energy portfolio; (iii) satisfying applicable resource adequacy requirements more efficiently, and (iv) satisfying applicable GHG emission compliance obligations more efficiently; and

WHEREAS, the Amended MPP Agreement specifies the terms and conditions under which NCPA will perform such services, including, but not limited to, NCPA’s and the City’s obligations regarding transaction process, transaction authorization and financial requirements; and

WHEREAS, the City, as a signatory to the Amended MPP Agreement, will be responsible to pay to NCPA each month the sum of the following: (i) Fixed MPP Costs of \$900, (ii) one-twelfth of the City’s allocated share of Variable MPP Costs calculated in accordance with the agreement, (iii) transaction specific costs for the City’s Contract Transactions, and (iv) commodity costs for the City’s Contract Transactions; and

WHEREAS, in addition to the aforementioned monthly payment obligations, the City is obligated to fund: (i) the City’s share of any and all required Security Deposits calculated in accordance with the Amended MPP Agreement, and (ii) the City’s share of working capital

requirements for the Market Purchase Program maintained at NCPA as set forth in the NCPA Annual Budget; and

WHEREAS, the environmental impact is addressed in the Staff Report; and

NOW, THEREFORE BE IT RESOLVED, that the City Council of the City provides authority to the mayor of the City of Biggs to execute the Amended and Restated Market Purchase Program Agreement on behalf of the City.

I HEREBY CERTIFY that the foregoing **RESOLUTION** was duly introduced, passed and adopted at a regular meeting of the City Council of the City of Biggs, held on the 12th day of June, 2012 by the following vote:

AYES:	COUNCILMEMBER	_____
NOES:	COUNCILMEMBER	_____
ABSENT:	COUNCILMEMBER	_____
ABSTAINED:	COUNCILMEMBER	_____

ATTEST:	APPROVED:
_____	_____
Roben Dewsnup CITY CLERK	Roger L. Frith MAYOR

AMENDED AND RESTATED
MARKET PURCHASE PROGRAM AGREEMENT

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This AMENDED AND RESTATED MARKET PURCHASE PROGRAM AGREEMENT ("the Agreement") is made effective as of _____ ("the Effective Date"), by and among the Northern California Power Agency, a joint powers agency of the State of California ("NCPA") and those of its Members who execute this Agreement ("Participants"). NCPA and the Participants are referred to herein individually as a "Party" and collectively as the "Parties".

RECITALS

A. NCPA and the Participants desire to amend the Market Purchase Program Agreement made effective August 1, 2007, by and among NCPA and the Market Purchase Program Participants, to enable NCPA, on behalf of the Participants, to engage in Contract Transactions to purchase and sell Energy, Resource Adequacy Capacity, RECs, GHG Compliance Instruments and Physical Option Products, for the benefit of the Participants' customers.

B. This Agreement is made to amend the Market Purchase Program Agreement, and to enable NCPA to transact in Approved Products identified in the Energy Risk and Counterparty Risk Management Regulations, on behalf of the Participants in accordance with the terms and conditions contained herein.

C. The Participants, through Contract Transactions authorized by this Agreement, seek to assure greater rate and budget stability by: (i) reducing the proportion of Energy that Participants need to acquire in a potentially volatile

spot market; (ii) transacting in bundled and unbundled RECs to manage Participants' renewable energy portfolios; (iii) satisfying applicable resource adequacy requirements more efficiently; and (iv) satisfying applicable GHG emission compliance obligations more efficiently.

D. The Participants desire that NCPA negotiate and enter into Contract Transactions with creditworthy counterparties to allow Participants to diversify their counterparty risk by subscribing to a more diverse portfolio of Contract Transactions than if each individually selected a single market counterparty.

E. The Participants recognize that several factors, including but not limited to, evaluation of counterparty risk, operational risk, price, and liquidity requirements, may be relevant to the decision of whether to enter into any Contract Transaction, including whether to use bundled or unbundled REC Transactions to accomplish individual Participant's renewable portfolio goals.

F. The Participants further desire to enable and obligate NCPA to conduct the foregoing activities, and to enable and obligate the Participants to deliver, take delivery of, and pay for Approved Products, and to pay NCPA for the costs of undertaking the foregoing activities.

G. The Parties further desire, insofar as possible, to insulate other Participants from the risks inherent in the transactions undertaken by any given

Participant, and to insulate non-Participant Members and NCPA from the risks undertaken by the Participants.

NOW THEREFORE, in consideration of the foregoing, the Parties agree and intend to be legally bound as follows:

Section 1. Definitions.

1.1 Definitions. Whenever used in this Agreement (including the Recitals hereto), the following terms shall have the following respective meanings:

1.1.1 "Adjusting Participant" means a Participant who has agreed to assume all or a portion of a Withdrawing Participant's Subscription Percentage in one or more Contract Transactions, as set forth in Section 11.2.1.

1.1.2 "Agreement" means this Amended and Restated Market Purchase Program Agreement, including all Exhibits attached hereto, as each may be amended from time to time in accordance with the terms and conditions hereof.

1.1.3 "All Resources Bill" means the single, combined monthly bill from NCPA to a Participant with respect to all NCPA programs and projects, as such may be amended from time to time.

1.1.4 "Allocating Participant" means a Participant who has formally elected and agreed to allocate all or a portion of its then existing Subscription Percentage share in one or more Contract Transactions to an existing or new Participant as set forth in Section 11.1.

1.1.5 "Annual Budget" means a NCPA budget for a specific Fiscal Year as adopted by the Commission, as it may be amended from time to time.

1.1.6 "Approved Products" means Energy, Resource Adequacy Capacity, RECs, GHG Compliance Instruments and Physical Option Products identified as such in the Energy Risk and Counterparty Risk Management Regulations.

1.1.7 "Associate Member" means an associate member of NCPA.

1.1.8 "Auction" shall mean those Commission-approved auctions set forth in Exhibit G.

1.1.9 "BART" means the San Francisco Bay Area Rapid Transit District.

1.1.10 "Bilateral Agreement" means an agreement used to purchase and sell Approved Products, entered into by NCPA with Third

Parties or among Participants. A Bilateral Agreement shall be in a form approved by the Commission.

1.1.11 "Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time.

1.1.12 "Bundled REC" means a REC procured or sold together with Energy as a "bundled" commodity.

1.1.13 "Broker" shall mean those Commission-approved brokers set forth in Exhibit H.

1.1.14 "Cap and Trade Program" means: (i) CARB's Regulation for the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms as set forth in title 17, California Code of Regulations, chapter 1, subchapter 10, article 5 (commencing with section 95800), as such may be amended from time to time, or (ii) other GHG compliance obligations, including but not limited to, federal, regional, state, or local jurisdictions.

1.1.15 "CARB" means the California Air Resources Board, or its successor organization.

1.1.16 "CARB Offset Credit" means a tradable compliance instrument issued by CARB that represents a GHG reduction or GHG removal enhancement of one metric ton of CO₂.

1.1.17 "Claims" has the meaning set forth in Section 14.2.

1.1.18 "Commission" means the NCPA Commission.

1.1.19 "Commodity Costs" means the costs billed to NCPA by a Third Party or Participant for an Approved Product acquired pursuant to a Contract Transaction.

1.1.20 "Commodity Revenues" means the payments rendered to NCPA by a Third Party or Participant for an Approved Product sold by NCPA pursuant to a Contract Transaction.

1.1.21 "Constitutive Documents" means, with respect to NCPA, the Joint Exercise of Power Act (Cal. Govt. Code § 6500 *et seq.*), the Joint Powers Agreement and any resolutions adopted thereunder, and the NCPA Rules of Procedure, and with respect to each Participant, the California Government Code and other statutory provisions applicable to such Participant, any applicable agreements, charters, contracts or other documents concerning the formation, operation or decision making of such Participant, including, if applicable, its City Charter, and any codes,

ordinances, bylaws, and resolutions adopted by such Participant's governing body.

1.1.22 "Contract Price" means, with respect to any Contract Transaction under this Agreement, the price per MWh, price per MW, price per REC, price per metric ton of carbon dioxide equivalent, and/or a combination of such per unit prices listed in the applicable Transaction Confirmation.

1.1.23 "Contract Transaction" means a purchase or sale of Approved Products involving a Third Party or Participant that satisfies the Transaction Conditions, and has been approved by each involved Party through use of a Participant Authorization in accordance with Section 6 of this Agreement.

1.1.24 "Deal Capture System" means NCPA's internal database that includes all of the MPP transactions and related details, such as scheduling, payments, price, delivery dates, Participant Subscription Percentage and the counterparties.

1.1.25 "Defaulting Party" has the meaning set forth in Section 13.1.

1.1.26 "Designated Representatives" means with respect to NCPA, its General Manager; and with respect to each Participant, its Utility

Director (an employee other than the Utility Director may be designated by resolution of the Participant's governing body).

1.1.27 "Effective Date" means the later of: (i) the date set forth in the preamble of this Agreement; or (ii) the date this Agreement is executed by all of the Participants.

1.1.28 "Electric System" means, with respect to each Participant except BART and the Port of Oakland, all properties and assets, real and personal, tangible and intangible, of the Participant now or hereafter existing, used or pertaining to the generation for resale, transmission, transformation, distribution or sale of electric capacity and energy, or the utilization of such, including all additions, extensions, expansions, improvements and betterments thereto and equipment thereof; provided, however, that to the extent the Participant is not the sole owner of an asset or property or to the extent that an asset or property is used in part for the above described purposes, only the Participant's ownership interest in such asset or property or only the part of the asset or property used for electric purposes shall be considered to be part of its Electric System. Should BART become a Participant under this Agreement, Electric System, with reference to BART shall mean its rail transit system. Should the Port of Oakland become a

Participant under this Agreement, Electric System, with reference to the Port of Oakland shall mean the Port of Oakland.

1.1.29 "Emissions Allowance" means a limited tradable authorization to emit up to one metric ton of carbon dioxide equivalent.

1.1.30 "Energy" means the generation or use of electric power over a period of time, usually expressed in megawatt hours, kilowatt hours or gigawatt hours.

1.1.31 "Energy Risk and Counterparty Risk Management Regulations" means that certain NCPA Energy Risk and Counterparty Risk Management Regulations, version 1.5, approved May 6, 2011, as the same may be amended from time to time.

1.1.32 "Energy Risk Management Policy" means that certain NCPA Energy Risk Management Policy, version 1.3, approved June 16, 2011, as the same may be amended from time to time.

1.1.33 "Environmental Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, directly attributable to the market transaction hereunder. Environmental Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides ("SOx"), nitrogen oxides ("NOx"), carbon monoxide ("CO") and other pollutants; (2) any

avoided emissions of carbon dioxide ("CO₂"), methane ("CH₄") and other greenhouse gases ("GHGs") that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (3) the reporting rights to these avoided emissions such as green tag reporting rights. Environmental Attributes do not include: (1) any energy, capacity, reliability or other power attributes; (2) production tax credits associated with the construction or operation of the energy projects and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income taxation obligation; (3) fuel-related subsidies or "tipping fees" that may be paid to seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular pre-existing pollutants or the promotion of local environmental benefits; (4) emission reduction credits encumbered or used by the unit(s) for compliance with local, state, or federal operating and/or air quality permits; and (5) RECs.

1.1.34 "Event of Default" has the meaning set forth in Section 9.7.3 and Section 13.1.

1.1.35 "Exchange" means a Commission-approved organized market on which transactions relating to Approved Products, in the form of

standardized contracts, may be entered into. Examples of Exchanges include the New York Mercantile Exchange ("NYMEX") and the Intercontinental Exchange ("ICE").

1.1.36 "Fiscal Year" means the NCPA fiscal year; currently the twelve month period beginning July 1 and ending on the next following June 30.

1.1.37 "Fixed MPP Costs" means those costs deemed to be incurred by NCPA regardless of whether NCPA transacts with Third Parties or Participants under this Agreement, including start-up costs and attorneys' fees.

1.1.38 "General Operating Reserve" means the NCPA General Operating Reserve created through resolution of the Commission, as the same may be amended from time to time.

1.1.39 "Greenhouse Gas" or "GHG" includes, but is not limited to, carbon dioxide ("CO₂"), methane ("CH₄"), nitrous oxide ("N₂O"), sulfur hexafluoride ("SF₆"), hydrofluorocarbons ("HFCs"), perfluorocarbons ("PFCs"), and other fluorinated gasses.

1.1.40 "GHG Compliance Instrument" means any instrument, including but not limited to, Emission Allowance, CARB Offset Credit or

Sector-Based Offset Credit that can be used to fulfill a GHG emissions compliance obligation.

1.1.41 "Initial Term" has the meaning set forth in Section 12 of this Agreement.

1.1.42 "Joint Powers Agreement" means that certain Amended and Restated Northern California Power Agency Joint Power Agreement dated as of January 1, 2008, as the same may be amended from time to time.

1.1.43 "Mandatory Reporting Regulation" or "MRR" means CARB's Regulation for the Mandatory Reporting of Greenhouse Gas Emissions as set forth in title 17, California Code of Regulations, chapter 1, subchapter 10, article 2 (commencing with section 95100), as such may be amended from time to time.

1.1.44 "Master Agreement" means a Commission-approved agreement used to purchase and sell Approved Products, entered into by NCPA with Third Parties. A Master Agreement shall be in the form of a standardized industry agreement, with such modifications as have been approved by the Commission, provided that, in any particular instance, a Master Agreement may be modified in the discretion of the NCPA General Manager and NCPA General Counsel, after consultation with the

Participants, where such modifications are reasonably required in order to consummate the Master Agreement or to transact under the MPP.

1.1.45 "Maximum Contract Price" means the applicable lawful ceiling price for Approved Products at the time a Contract Transaction is consummated.

1.1.46 "Member" means any Member or Associate Member of NCPA.

1.1.47 "MW" means megawatt.

1.1.48 "MWh" means megawatt hour.

1.1.49 "MPP" or "Market Purchase Program" means the NCPA Market Purchase Program established by this Agreement, consisting of all Contract Transactions hereunder and all Participants hereto as program Participants.

1.1.50 "MPP Costs" are all Fixed MPP Costs and Variable MPP Costs (each including administrative and general overhead costs), other than Transaction Specific Costs and Commodity Costs associated with the MPP.

1.1.51 "NCPA" has the meaning set forth in the preamble hereto.

1.1.52 "NCPA Rules of Procedure" means the Rules of Procedure for the Northern California Power Agency, sometime referred to as the "NCPA By-laws", as such may be amended from time to time.

1.1.53 "Participant" means a Member of NCPA who has executed this Agreement as set forth herein.

1.1.54 "Participant Authorization" means a Participant's written and properly executed authorization of a Contract Transaction, in the form of Exhibit A, Exhibit B, or Exhibit C.

1.1.55 "Party" or "Parties" has the meaning set forth in the preamble hereto; provided that "Third Parties" are entities that are not party to this Agreement.

1.1.56 "Physical Call Option" means a contract that offers a buyer the right, but not the obligation, to buy a quantity of Energy to be delivered at a predetermined price.

1.1.57 "Physical Collar Transaction" means a transaction strategy used to mitigate the risk of market price volatility, consummated through the purchase of a Physical Call Option and the sale of a Physical Put Option, for the same term and quantity, to effectuate a ceiling and floor price for Energy transactions.

1.1.58 "Physical Option Products" means a Physical Call Option or Physical Collar Transaction for Energy that is entered into to stabilize the costs of Energy for one or more Participants.

1.1.59 "Physical Put Option" means a contract that offers a seller the right, but not the obligation, to sell a quantity of Energy to be delivered at a predetermined price.

1.1.60 "Port of Oakland" means the City of Oakland, acting by and through its Board of Port Commissioners.

1.1.61 "Principal Counsel" means with respect to NCPA, its General Counsel, and with respect to each Participant, its City Attorney or General Counsel.

1.1.62 "Procure" or "Purchase" and other forms of such verbs, including Procurement, Procuring, Procured, Purchasing and Purchased means acquiring Approved Products through Contract Transactions with Third Parties or Participants.

1.1.63 "Renewable Energy Certificate" or "REC" means a certificate of renewable energy generation from units that register in the WREGIS system, or other commonly accepted renewable energy generation tracking system or program, which can be used to verify compliance with state and provincial regulatory requirements such as Renewable Portfolio

Standards. A REC may or may not include associated Environmental Attributes as specified in a Contract Transaction.

1.1.64 "Renewable Portfolio Standard" or "RPS" means the California Renewable Energy Resources Act, SB 2 (1X) (Simitian, Chapter 1, Statutes of 2011, First Extraordinary Session), as may be amended from time to time.

1.1.65 "Replacement Commodity Costs" means the costs billed to NCPA by a Third Party or Participant for an Approved Product acquired by NCPA as an alternative supply of Approved Product in order to complete a Contract Transaction.

1.1.66 "Resource Adequacy Capacity" is that capacity in MW that has been approved by each Participant, acting as a local regulatory authority, as capacity available to ensure that adequate resources are available to meet peak demand and planning reserves for the purposes of local area and system reliability.

1.1.67 "Revenues" means with respect to each Participant other than BART, all income, rents, rates, fees, charges and other revenues derived by the Participant from the ownership or operation of its Electric System, including, without limiting the generality of the foregoing: (a) all income, rents, rates, fees, charges or other moneys derived from the sale, furnishing

and supplying of electric capacity and energy and other services, facilities, and commodities sold, furnished, or supplied through the facilities of its Electric System; (b) the earnings on and income derived from the investment of such income, rents, rates, fees, charges or other moneys to the extent that the use of such earnings and income is limited by or pursuant to law to its Electric System; and (c) the proceeds derived by the Participant directly or indirectly from the sale, lease or other disposition of all or a part of the Electric System, but the term Revenues shall not include (i) customers' deposits or any other deposits subject to refund until such deposits have become the property of the Participant; or (ii) contributions from customers for the payment of costs and construction of facilities to serve them. Should BART become a Participant, with reference to BART, Revenues means, all income, rents, rates, fees, charges, grants, fares or tariffs, subventions and other moneys derived from its operations including, without limiting the generality of the foregoing, (i) the earnings on and income derived from the investment of such income, rents, rates, fees, charges, grants, fares or tariffs, subventions or other moneys and (ii) the proceeds derived directly or indirectly from the sale, lease or other disposition of all or a part of its assets, but the term Revenues shall not include any moneys derived from sources the use of which is limited by law to expenditures other than operating expenses.

1.1.68 "Request for Proposal" or "RFP" means the issuance of a request for offers and or bids to purchase or sell Approved Products.

1.1.69 "Scheduling Protocols" means the applicable provisions of the Scheduling Coordinator Program Agreement and any other contractual or other arrangements between NCPA and the relevant Participant concerning the scheduling, delivery and metering of a Contract Transaction approved by the Parties.

1.1.70 "Sector-Based Offset Credit" means a credit issued from a sector-based crediting program once the crediting baseline for a sector has been reached.

1.1.71 "Security Deposit" means funds deposited by Participants with NCPA that are irrevocably committed and held in the General Operating Reserve in accordance with Section 9.4. Such funds are available for use by NCPA in accordance with the terms and conditions hereof.

1.1.72 "Sale" or "Sell" and other forms of such verb, including Selling and Sold, means to transfer Approved Products through Contract Transactions to Third Parties or Participants.

1.1.73 "Subscription Percentage" means that proportion of a Contract Transaction that a Participant subscribes to through a Participant Authorization, in accordance with the terms of this Agreement.

1.1.74 "Term" has the meaning set forth in Section 12.

1.1.75 "Transaction Conditions" has the meaning set forth in Section 4.

1.1.76 "Transaction Confirmation" has the meaning given to it in the Master Agreement used to transact Approved Products through a Contract Transaction.

1.1.77 "Transaction Instrument" has the meaning set forth in Section 5.

1.1.78 "Transaction Specific Costs" means any and all costs, except for Commodity Costs, directly or indirectly incurred by NCPA arising due to the execution of a Contract Transaction. Transaction-Specific Costs include, but are not limited to, termination payments, counterparty requests for assurances, related legal fees, option premiums and associated staff time.

1.1.79 "Unbundled REC" means a REC procured or sold as a separate commodity, apart from the underlying renewable Energy that was generated to create the REC.

1.1.80 "Utility Director" means the most senior employee of a Participant with authority and duty to direct, manage, and control operations of the Participant's electric utility; or, if the Participant does not have an electric utility, the most senior employee with authority and duty to direct, manage, and control acquisition and use of electric power on behalf of that Participant.

1.1.81 "Variable MPP Costs" are those costs that are common to all Participants under this Agreement but are expected to vary with the size and scope of the MPP established under this Agreement, including NCPA staff time.

1.1.82 "WECC" means the Western Electricity Coordinating Council, or its successor organization.

1.1.83 "Withdrawing Participant" means a Participant that has withdrawn from the Agreement as set forth in Section 11.2.1.

1.1.84 "WREGIS" means the Western Renewable Energy Generation Information System which is the independent, renewable energy tracking system for the region covered by WECC, established by the California Energy Commission pursuant to Section 399.25 of the California Public Utilities Code, as the same may be amended from time to time.

1.2 Rules of Interpretation. As used in this Agreement (including the Recitals hereto), unless in any such case the context requires otherwise: the terms "herein," "hereto," "herewith" and "hereof" are references to this Agreement taken as a whole and not to any particular provision; the term "include," "includes" or "including" shall mean "including, for example and without limitation;" and references to a "Section," "subsection," "clause," or "Exhibit" shall mean a Section, subsection, clause or Exhibit of this Agreement, as the case may be. All references to a given agreement, instrument or other document shall be a reference to that agreement, instrument or other document as modified, amended, supplemented and restated through the date as of which such reference is made, and reference to a law, regulation or ordinance includes any amendment or modification thereof. A reference to a "person" includes any individual, partnership, firm, company, corporation, joint venture, trust, association, organization or other entity, in each case whether or not having a separate legal personality and includes its successors and permitted assigns. The singular shall include the plural and the masculine shall include the feminine, and *vice versa*.

Section 2. Effectiveness of Agreement. This Agreement shall be in force as to each Participant on the first day of the month following the Effective Date, subject to the provisions for new Participants in Section 11.1 below.

Section 3. Authority. NCPA has the authority to purchase and sell Approved Products using Contract Transactions in accordance with the terms of this Agreement. Participants shall have the authority to subscribe to Contract Transactions pursuant to the terms and conditions set forth in this Agreement.

Section 4. Transaction Conditions. All Contract Transactions consummated in accordance with this Agreement shall satisfy the following conditions (“Transaction Conditions”):

4.1.1 Contract Transactions shall be made in accordance with all requirements and conditions set forth in NCPA’s Energy Risk Management Policy and Energy Risk and Counterparty Risk Management Regulations, including, but not limited to, those limiting the term and volume of Contract Transactions; and

4.1.2 Contract Transactions shall be limited to those Approved Products listed in NCPA’s Energy Risk Management Policy and Energy Risk and Counterparty Risk Management Regulations; and

4.1.3 The Contract Price for a Contract Transaction shall not exceed the Maximum Contract Price for the relevant product.

Section 5. Transaction Instruments.

5.1 NCPA shall negotiate and enter into all necessary agreements and related or incidental documents required to consummate a Contract Transaction;

provided, however, that all Contract Transactions undertaken by NCPA pursuant to this Agreement may only be initiated using one or more of the following Commission-approved instruments ("**Transaction Instruments**"):

5.1.1 Contract Transactions may be initiated through the use of a Commission-approved Master Agreement. Commission-approved Master Agreements are listed in Exhibit D.

5.1.2 Contract Transactions may be initiated through the use of a Commission-approved Bilateral Agreement. Commission-approved Bilateral Agreements are listed in Exhibit E.

5.1.3 Contract Transactions may be initiated through the use of a Commission-approved Exchange. Commission-approved Exchanges are listed in Exhibit F.

5.1.4 Contract Transactions may be initiated through the use of a Commission-approved Auction.

The relevant Exhibits of the Agreement shall be amended from time to time to reflect the addition of and removal of Commission-approved Transaction Instruments in accordance with Section 14.5.2.

5.2 Amendments to Transaction Instruments. The Commission-approved Master Agreements and Commission-approved Bilateral Agreements utilized to consummate Contract Transactions may, in any given instance, be

modified in the discretion of the NCPA General Manager and NCPA General Counsel, after consultation with the Participants, to include additional terms and conditions approved by the Parties' Designated Representative and approved as to form, procedure and authorization by the Parties' Principal Counsel, or to delete previously approved Commission modifications to the form of the Master Agreement(s) and Bilateral Agreement(s), where such modifications are reasonably required in order to transact under the MPP.

Section 6. Transaction Process and Participant Subscription to a Contract

Transaction. From time-to-time, NCPA may propose that one or more Participants subscribe to a Contract Transaction, or one or more Participants may request NCPA to initiate a Contract Transaction in accordance with the terms and conditions of the Agreement. All Contract Transactions undertaken pursuant to the Agreement shall be initiated: (i) through the use of a Request for Proposal initiated by NCPA, or in response to a Request for Proposal initiated by a Third Party or Participant, (ii) through use of direct and/or bilateral negotiations with a Third Party or Participant, or (iii) on a Commission approved Exchange or Auction. At NCPA's sole discretion, a Contract Transaction may be centrally cleared or entered into through the use of a Broker.

6.1 **Contract Transaction Subscription Process.** To initiate a Contract Transaction NCPA shall deliver a Participant Authorization for the proposed

Contract Transaction to each Participant who is seeking to transact Approved Products. Each such Participant Authorization shall be substantially in the form of Exhibit A, B or C, as applicable, and shall specify, among other things, the quantity and price (or not-to-exceed price) for the Approved Product(s) contemplated to be consummated through a Contract Transaction. Each Participant shall promptly review such proposed Participant Authorization, and upon such review may elect to subscribe to a Contract Transaction by delivering an executed Participant Authorization to NCPA.

6.2 NCPA Obligations. Upon receipt of a duly executed Participant Authorization, NCPA shall use reasonable efforts to attempt to consummate a Contract Transaction through use of a corresponding Transaction Instrument, as specified in a Participant Authorization, on behalf of one or more Participants; provided, however, that NCPA shall not enter into a Contract Transaction for any Participant that: (i) has failed to maintain sufficient Security Deposits as required by Section 9.4, (ii) is otherwise in default under the terms of this Agreement, or (iii) has not met the Transaction Conditions set forth in Section 4 of this Agreement.

Upon consummation of a Contract Transaction, NCPA shall notify and report the transaction results to each Participant that has a Subscription Percentage in said Contract Transaction.

6.3 Participant Obligations. By executing this Agreement, each Participant acknowledges and agrees to be bound by their Designated Representatives' execution and Principal Counsel's approval as to form, procedure and authorization of a Participant Authorization substantially in the form of Exhibit A, B, or C hereto, as applicable, for each corresponding Contract Transaction. Each Participant also: (i) acknowledges and approves the terms of the corresponding Transaction Instrument(s) utilized by NCPA to consummate a Contract Transaction, and agrees to take any and all actions necessary for NCPA to comply in a timely manner with any terms and conditions of said Transaction Instrument(s), (ii) agrees to pay for and take delivery of its Subscription Percentage share, or to take receipt of payment for and deliver its Subscription Percentage share of Approved Products, and (iii) agrees to pay its Subscription Percentage share of all fees, costs, or other amounts payable in connection with the execution, arrangement, maintenance, and termination or liquidation of Contract Transactions.

6.4 Subscription Percentages. The Subscription Percentages of each Participant for each Contract Transaction shall be maintained in NCPA's Deal Capture System, and summary reports therefrom will be provided to Participants upon request.

Section 7. Delivery and Receipt of a Contract Transaction. Approved

Products shall be delivered to or collected from Participants in accordance with each Participant's Subscription Percentage of a Contract Transaction.

7.1 Deliveries to Participants. Any Approved Products delivered to NCPA from a Contract Transaction shall be delivered to each Participant in proportion to such Participant's Subscription Percentage, and each Participant shall accept and pay for its Subscription Percentage share of such Contract Transaction.

7.2 Delivery from Participants. Any Approved Products delivered by NCPA to a Third Party from a Contract Transaction shall be supplied by each Participant in proportion to such Participant's Subscription Percentage, and each Participant shall accept payment for its Subscription Percentage share of such Contract Transaction.

7.3 Failure to Take Delivery or Deliver. To the extent a Participant is unable to accept delivery of any Approved Products in full, or a Participant is unable to make delivery of any Approved Products in full, NCPA shall either: (i) dispose of such surplus Approved Products, in its sole discretion, in such a manner as to attempt to maximize Participant value, or (ii) purchase an alternative supply of equivalent Approved Products, in its sole discretion, in such a manner as to attempt to minimize Participant cost, in order to complete

full delivery of the Contract Transaction, or terminate the Contract Transaction with respect to that Participant. If a Participant fails to deliver Approved Products to NCPA, NCPA, in its sole discretion, may seek to purchase an alternative supply of Approved Products to deliver Participant's relevant supply obligation in full under the Contract Transaction, in such a manner as to attempt to minimize Participant cost. A Participant that fails to deliver Approved Products to NCPA in accordance with its Subscription Percentage shall be responsible for all costs incurred by NCPA in connection with Approved Products replacement, or Contract Transaction termination, including any associated Replacement Commodity Costs. If a Participant fails to provide NCPA with Approved Products in accordance with its Subscription Percentage, and NCPA is unable to purchase an equivalent alternative supply of Approved Products to deliver Participant's relevant supply obligations in full under the Contract Transaction, or otherwise terminates the Contract Transaction, all damages assessed to NCPA that are attributed to Participant's failure to deliver the Approved Product will be charged to and paid by that Participant.

7.4 Scheduling. Contract Transactions shall be scheduled for the Participants in accordance with the Scheduling Protocols.

7.5 REC Transfers. Transferring RECs as required pursuant to a Contract Transaction made in accordance with the Agreement shall be

performed in accordance with: (i) the rules and procedures established by WREGIS, or (ii) the rules and procedures adopted by other commonly accepted renewable energy generation tracking systems or programs, as applicable.

7.6 GHG Compliance Instrument Transfers. Transferring GHG Compliance Instruments as required pursuant to a Contract Transaction made in accordance with the Agreement shall be performed in accordance with: (i) the Cap and Trade Program, (ii) the Mandatory Reporting Regulations, or (iii) the rules and procedures adopted by other commonly accepted GHG Compliance Instrument tracking systems or programs, as applicable.

Section 8. Cooperation and Further Assurances. Each of the Parties agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by any other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumption of obligations other than those provided for in this Agreement, in order to give full effect to this Agreement and to carry out the intent of this Agreement. Further, the Parties agree to cooperate and act in good faith in connection with obtaining any credit support required in order to transact in an Approved Product using a Contract Transaction, including with respect to negotiating and executing any agreements to implement any credit support arrangements.

Section 9. Financial Obligations, Invoicing and Security Deposit

Administration.

9.1 Participant Payment Obligations. Each Participant agrees to pay to NCPA each month the sum of the following:

9.1.1 Estimated Fixed MPP Costs of \$900 (estimated Fixed MPP Costs may be adjusted each Fiscal Year, as approved by the Commission, during the Annual Budget process); and

9.1.2 One-twelfth (1/12) of Participant's allocated share of estimated Variable MPP Costs for the Fiscal Year as determined in Section 9.2; and

9.1.3 Transaction Specific Costs for each Contract Transaction in accordance with Participant's Subscription Percentage share; and

9.1.4 Commodity Costs for each Contract Transaction in accordance with Participant's Subscription Percentage share.

In addition to the aforementioned monthly payment obligations, each Participant is obligated to fund: (i) any and all required Security Deposits calculated in accordance with Section 9.4, and (ii) the working capital requirement for the Market Purchase Program maintained by NCPA as set forth in the Annual Budget.

9.2 Calculation of Variable MPP Costs. Participants' payment obligations for Variable MPP Costs under Section 9.1 shall be calculated as follows. For each Fiscal Year, NCPA shall estimate the total Variable MPP Costs to be incurred under this Agreement. A share of the estimated total Variable MPP Costs will be allocated to each Participant based on each Participant's proportionate share of the total Participants' Contract Transaction volumes for all Approved Products forecasted to be transacted during the Fiscal Year, as estimated by NCPA in its sole discretion.

9.3 True-Up of Budgeted vs. Actual Fixed MPP Costs and Variable MPP Costs. Upon the conclusion of each Fiscal Year, NCPA, as part of its Annual Budget settlement process, shall compare each Participant's payment of estimated Fixed MPP Costs and Variable MPP Costs during the Fiscal Year with actual Fixed MPP Costs and Variable MPP Costs incurred on behalf of Participant. Overpayments and/or underpayments of Fixed MPP Costs and Variable MPP Costs will be credited and/or debited to Participants as directed by the Commission in the Annual Budget settlement process.

9.4 Security Deposit Requirements. Each Participant agrees that any funds deposited at NCPA to satisfy Participant's Security Deposit requirements pursuant to this Agreement shall be irrevocably committed and held by NCPA in the General Operating Reserve, and that such funds may be used by NCPA in

accordance with Section 9.4.4. Each Participant's Security Deposit will be accounted separately from and in addition to any other security accounts or deposits maintained pursuant to any other agreement between NCPA and the Participant, or any other such security account or deposits required of Members. In connection with fulfilling the Security Deposit requirements of this Agreement, Participant may elect to use its uncommitted funds held in the General Operating Reserve to satisfy in whole or in part its Security Deposit required under Section 9.4. If Participant chooses to satisfy in whole or in part its security requirements using its uncommitted funds held in the General Operating Reserve, Participant is required to execute and deliver to NCPA an Irrevocable Letter of Direction, as set forth in Exhibit I, directing NCPA to utilize Participant's uncommitted General Operating Reserve funds for such purposes, and the designated funds will thereafter be irrevocably committed and held by NCPA to satisfy the requirements of this Agreement.

9.4.1 Initial Amounts. Prior to subscribing to a Contract Transaction a Participant shall insure that sufficient Security Deposit funds have been deposited with and are held by NCPA equal to the highest three (3) months of estimated Commodity Costs for all Contract Transactions in which Participant has or will subscribe to purchase Approved Products, as estimated by NCPA. Such Security Deposit requirement may be satisfied by

Participant in whole or part either in cash, through irrevocable commitment of its uncommitted funds held in the General Operating Reserve in accordance with Section 9.4, or through a clean, irrevocable letter of credit satisfactory to NCPA's General Manager. Commodity Revenues resulting from a Contract Transaction may not be counted against or netted with a Participant's Security Deposit requirements; hence Commodity Revenues may not be used in lieu of Security Deposit funds, or a letter of credit, to reduce a Participant's obligations under Section 9.4 of this Agreement.

9.4.2 Additional Security Deposit Amounts. In addition to a Security Deposit amount equal to the highest three (3) months of estimated Commodity Costs for all Contract Transactions in which Participant has or will subscribe, incremental funds may be required from a Participant to commence a transaction, satisfy a margin call or terminate and liquidate a Contract Transaction. Prior to executing a Contract Transaction, NCPA's Chief Financial Officer, or designee, will notify each subscribing Participant of the necessary incremental Security Deposit amount to be funded and deposited with NCPA by inserting such amount in the relevant portion of the Participant Authorization.

9.4.3 Subsequent Deposits. Periodically, and at least quarterly,

NCPA shall review and revise its estimate of all costs for which Participant

shall be obligated to pay under this Agreement. Following such review, NCPA shall determine whether each Participant has a sufficient Security Deposit balance at NCPA. To the extent that any Participant's Security Deposit balance is greater than one hundred and ten percent (110%) of the amount required herein, NCPA shall credit such amount as soon as practicable to the Participant's next following All Resources Bill, or by separate special invoice. To the extent that any Participant's Security Deposit balance is less than ninety percent (90%) of the amount required herein, NCPA shall add such amount as soon as practicable to such Participant's next All Resources Bill, or as necessary, to a special invoice to be paid by Participant upon receipt. Credits or additions shall not be made to Participants who satisfy these Security Deposit requirements in whole through the use of a letter of credit, provided that the amount of the letter of credit shall be adjusted, as required from time to time, in a like manner to assure an amount equal to the highest three (3) months of estimated Commodity Costs is available to NCPA.

9.4.4 Use of Security Deposit Funds. NCPA may use any and all Security Deposit funds held by NCPA (or utilize a letter of credit provided in lieu thereof) to pay any costs it incurs hereunder, including making payments to counterparties under any Transaction Instrument used to

consummate a Contract Transaction, replacing Approved Products not delivered by a Participant that subscribes to a Contract Transaction, or for termination payments, requests for assurances by Third Parties, credit support, and related expenses incurred pursuant to a Contract Transaction, without regard to any individual Participant's Security Deposit balance or proportionate share of MPP Costs, and irrespective of whether NCPA has issued an All Resources Bill or special invoice for such costs to the Participants or whether a Participant has made timely payments of All Resources Bills or special invoices. Should Participant have satisfied its Security Deposit requirements in whole or part through a letter of credit, NCPA may draw on such letter of credit to satisfy Participant's obligations hereunder at NCPA's sole discretion.

9.4.5 Accounting. If Security Deposit funds or a letter of credit are used by NCPA to pay any costs it incurs hereunder as described in Section 9.4.4, NCPA will maintain a detailed accounting of each Participant's shares of funds withdrawn, and upon the collection of all or a part of such withdrawn funds, NCPA will credit back to each non-defaulting Participant the funds collected in proportion to such non-defaulting Participant's share of funds initially withdrawn.

9.4.6 Emergency Additions. In the event that funds are withdrawn pursuant to Section 9.4.4, or if the Security Deposit held by NCPA is otherwise insufficient to allow for NCPA to pay any invoice, demand, request for further assurances by Third Parties, or Claims, NCPA shall notify all Participants of the deficiency. In conjunction with such notice, NCPA shall send a special or emergency assessment invoice to the Participant or Participants that caused or are otherwise responsible for the deficiency. Each Participant of such an invoice shall pay to NCPA such assessment when and if assessed by NCPA within two (2) Business Days of the invoice date of the assessment, or shall consent to and direct NCPA to draw on any existing letter of credit Participant has established for such purposes. In the event that the Participant or Participants that caused or are otherwise responsible for the deficiency cannot, does not or will not pay to NCPA the special or emergency assessment within two (2) Business Days of the invoice date, NCPA shall immediately submit a special or emergency invoice to all remaining Participants in accordance with Section 14.3.2, and such remaining Participants shall pay to NCPA such assessment within two (2) Business Days of the invoice date of the assessment, or shall consent to and direct NCPA to draw on any existing letter of credit that Participant has established for such purposes.

9.4.7 Security Deposit Interest. NCPA shall maintain a detailed accounting of each Participant's Security Deposits, and withdrawals of such funds, held by NCPA. Security Deposits held by NCPA shall be invested by NCPA in accordance with the General Operating Reserve policies and investment policies adopted by the NCPA Commission. Interest earned on the Security Deposit funds shall be proportionately credited to the Participants in accordance with their weighted average balances held therein. Any Security Deposit losses caused by early termination of investments shall be allocated among the Participants in accordance with the General Operating Reserve provisions and guidelines approved by the Commission, as the same may be amended from time to time; provided, however, to the extent that either the General Operating Reserve provisions and guidelines do not apply or the Security Deposit is not adequate to cover the losses, then such losses shall be allocated among the Participants in accordance with their proportionate Security Deposit balances.

9.4.8 Return of Funds. Upon termination or a permitted withdrawal of a Participant in accordance with this Agreement, the affected Participant may apply to NCPA for the return of their share of Security Deposit funds ninety (90) days after the effective date of such termination or withdrawal. However, NCPA shall, in its sole but reasonable discretion, as

determined by the NCPA General Manager, estimate the then outstanding liabilities of the Participant, including any estimated contingent liabilities and shall retain all such funds, if any, until all such liabilities have been fully paid or otherwise satisfied in full. After all such liabilities have been satisfied in full, as determined by NCPA's General Manager, any remaining balance of the Participant's share of the Security Deposit will be refunded to the Participant within sixty (60) days thereafter

9.5 Contract Transactions Removed from the MPP. Any Contract Transaction shall no longer be included in the calculation of a Participant's obligations set forth in Section 9.1 or the Security Deposit requirements set forth in Section 9.4 on the date its Transaction Confirmation terminates or expires and Participant's obligations under this Agreement attributed to such a Contract Transaction have been satisfied in full; provided, however, that all other obligations set forth in this Agreement shall remain effective and applicable to such Participant, including but not limited to this Agreement's Indemnity and Hold Harmless obligation set forth in Section 14.2 and Joint Liability obligation set forth in Section 14.3.2. All other Contract Transactions shall continue to be included in the calculation of a Participant's obligations set forth in Section 9.1 and the Security Deposit requirements set forth in Section 9.4, until such time as NCPA approves otherwise. NCPA may, in its sole discretion, remove a

Contract Transaction from the calculation of a Participant's obligations through alternate means including assignment, book-out, offsetting transaction, or termination. Any proceeds or costs associated with removing a Contract Transaction from use in the calculation of Participants' obligations herein shall be allocated among the Participants in accordance with their Subscription Percentages unless otherwise agreed upon in writing by the Participants.

9.6 Invoicing.

9.6.1 Invoices. As part of NCPA's regular, monthly, advance billing (the "All Resources Bill") or by separate special invoice, as required in the circumstances, NCPA will issue an invoice to each Participant that will include its Subscription Percentage share of the Commodity Costs, Commodity Revenues, MPP Costs and Transactions Specific Costs due or payable (or any adjustments thereto) in accordance with Section 9. Each invoice shall include, but is not limited to the following:

(i) The total Transaction Specific Costs and Commodity Costs attributable to Procurement of Approved Products under this Agreement for such month and the relevant Participant's share thereof;

(ii) The total Transaction Specific Costs and Commodity Revenues collected from Selling Approved Products under this Agreement for such month and the relevant Participant's share thereof;

- (iii) The total MPP Costs attributable to program services for such month and the relevant Participant's share thereof;
- (iv) The quantity of Approved Products, by Contract Transaction, delivered to or supplied from such Participant (or an estimate thereof) and the unit price for such Approved Products;
- (v) Appropriate settlement and meter data (or an estimate thereof);
- (vi) Any adjustments to prior invoices required based on actual data received that was estimated in a previous invoice;
- (vii) Notice of the amount, if any, that NCPA has paid or expects to pay using Security Deposit funds; and
- (viii) Amounts due from (or credited to) such Participant under Section 9.4.3.

9.6.2 Payment of Invoices. All non-emergency invoices delivered by NCPA in the normal course of billing hereunder (including the All Resources Bill and special invoices) are due and payable within thirty (30) days of the invoice date; provided, however, that any amount due on a day other than a Business Day may be paid on the following Business Day.

NCPA may apply a Participant's Security Deposit share to the payment of all or any portion of an invoice issued to such Participant (including that portion

of an invoice relating to the MPP), provided that application of such Security Deposit funds shall not relieve the Participant from any late payment charges pursuant to Section 9.6.3. To the extent that NCPA applies Security Deposit funds to pay an amount due under an invoice, following receipt of payment of such invoice by the relevant Participant, NCPA shall deposit the relevant portion of the payment to the General Operating Reserve and credit such Security Deposit to such Participant. Emergency invoices shall be due as indicated in Section 9.4.6 above.

9.6.3 Late Payments. Any amount due and not paid by a Participant in accordance with Section 9.6.2 and 9.4.6 shall bear interest computed on a daily basis until paid at the lesser of: (i) the per annum prime rate (or reference rate) of the Bank of America NT&SA then in effect, plus two percent (2%), or (ii) the maximum rate permitted by law.

9.7 Settlement Data and Examination of Books and Records.

9.7.1 Settlement Data. NCPA will make metering and settlement data available to the Participants, as applicable. Procedures and formats for the provision of such data will be as established by the NCPA Commission from time to time.

9.7.2 Examination of Books and Records. Any Participant to this Agreement shall have the right to examine the books and records created

and maintained by NCPA pursuant to this Agreement at any reasonable, mutually agreed upon time.

9.7.3 Revenue Covenant. Any failure of a Participant to meet its obligations hereunder or to cure such failure in a timely manner shall constitute an Event of Default and the Defaulting Party shall be subject to such remedies of NCPA as provided for herein. Each Participant covenants and agrees:

(i) To continue to pay or advance to NCPA, from its Revenues only, provided that such sources shall not include any sums derived from sources the use of which is limited by law to expenditures other than operating expenses, and its obligations under this Agreement. Each Participant further agrees that it will fix the rates and charges for services provided by its Electric System so that it will at all times have sufficient money in its department revenue funds to meet this obligation;

(ii) To make payments under this Agreement from the Revenues of, and as an operating expense of, its Electric System;

(iii) To make payments under this Agreement whether or not there is an interruption in, interference with, or reduction or suspension of services provided under this Agreement, such payments not being subject to any reduction, whether by offset or otherwise, and regardless of whether any dispute

exists provided such interruption, interference or reduction in services is caused by forces constituting an Act of God and not reasonably contemplated by the Parties; and

(iv) To operate its Electric System and the business in connection therewith in an efficient manner and at reasonable cost and to maintain its Electric System in good repair, working order, and condition.

Section 10. Administration of Agreement.

10.1 General. Except as otherwise specified in this Agreement, the NCPA Commission has sole overall responsibility and authority for the administration of this Agreement. Any acts, decisions or approvals taken, made or sought by NCPA under this Agreement shall be taken, made or sought, as applicable, in accordance with NCPA's Constitutive Documents and Section 10.2.

10.2 Action by Participating Members.

10.2.1 Forum. Whenever any action anticipated by this Agreement is required to be taken by the Participants, such actions shall be taken at a regular or special meeting of the NCPA Commission, but shall be participated in only by those Commissioners, or their designated alternates, who represent Participants.

10.2.2 Quorum. A quorum at NCPA Commission meetings for purposes of acting upon matters relating to this Agreement shall consist of

Commissioners, or their designated alternates, representing the majority of Participants to the extent not inconsistent with Section 10.2.3(i), provided that as to matters related to a specific Contract Transaction a quorum shall consist of Commissioners, or their designated alternatives, representing a majority interest in the Contract Transaction based upon their Subscription Percentages.

10.2.3 Voting. Each Participant shall have the right to cast one vote with respect to matters pertaining to this Agreement, with a majority vote of the Participants required for action subject to the following exceptions:

(i) Upon request of any Participant representative with a Subscription Percentage in a specific Contract Transaction, the voting on an issue related to a specific Contract Transaction shall be by Participant Subscription Percentage with a 65% or more favorable vote necessary to carry the action.

(ii) After any decision related to this Agreement, other than for a specific Contract Transaction, is taken by the affirmative vote of less than 65% of the Participants, the action can be reviewed and revised if a Participant gives notice of intention to seek such review and revision to NCPA and each of the other Participants within ten (10) days following the date on which such action was taken. Upon receipt of such a request for reconsideration, the Chairman of

the Commission shall agendize the matter for reconsideration at the next regular meeting of the Commission or at a special meeting if the circumstances so warrant. The action shall be upheld upon a majority vote of the authorized representatives of the Participants, where each Participant will have the right to cast one vote as to the matter presented for reconsideration. Any action taken upon reconsideration shall be final.

Section 11. Admission and Withdrawal of Participants.

11.1 Admission of New Participants. Following the Effective Date of this Agreement, a Member may execute this Agreement and become a Participant provided that such joinder is approved by the NCPA Commission in accordance with Section 10.2, and the new Participant: (i) reimburses existing Participants for a proportionate share of the applicable costs identified during NCPA's Annual Budget process and any MPP Costs incurred to establish and administer this MPP Program as determined by existing Participants, and (ii) satisfies all Security Deposit requirements under this Agreement.

A new Participant shall not be entitled to receive any Approved Products or be obligated to provide any Approved Products in connection with a Contract Transaction entered into prior to the date it becomes a Participant unless one or more Allocating Participants formally elect to allocate a portion of its

Subscription Percentage share of an existing Contract Transaction to such new Participant.

Upon execution of such formal agreement therefore and affirmative vote thereon by all Allocating Participants, NCPA shall prepare and distribute to each Participant the written agreement between the new Participant and the Allocating Participant(s) indicating the agreed upon change in the Subscription Percentage(s) for the designated Contract Transaction(s), a counterpart of this Agreement executed by the new Participant, and a report from NCPA's Deal Capture System reflecting the revised Subscription Percentages. Any reduction in any Allocating Participant's Security Deposit share shall be credited to the Allocating Participants in accordance with Section 9.4.3.

11.2 Withdrawal of Participants.

11.2.1 Requirements and Process. A Participant may voluntarily withdraw from this Agreement by providing two (2) years' advance written notice to NCPA and the other Participants. Notwithstanding the aforementioned, such Withdrawing Participant's liability pursuant to Section 14.3.2 will not be eliminated or reduced after Withdrawing Participant formally withdraws unless Withdrawing Participant no longer has a Subscription Percentage in an outstanding Contract Transaction, or Withdrawing Participant has assigned all its outstanding Contract

Transaction Subscription Percentage to an Adjusting Participant. If Withdrawing Participant has no Subscription Percentage in an outstanding Contract Transaction or has otherwise assigned all its outstanding Contract Transaction Subscription Percentage to an Adjustment Participant, such Withdrawing Participant shall continue to be considered a non-defaulting Participant with no outstanding Contract Transactions for the purposes of Section 14.3.2 from the time Withdrawing Participant provides two (2) years' advance written notice of its intent to withdraw from this Agreement to the time that Participant formally withdraws. Upon the mutual agreement of two or more Participants, the Withdrawing Participant may assign all, or a portion of, its Subscription Percentage share of its Contract Transactions to an Adjusting Participant, if such withdrawal and assignment does not violate any applicable credit support conditions contained in any of the relevant agreements to which the Withdrawing Participant and/or Adjusting Participant is a party. The Withdrawing Participant shall provide to NCPA the applicable assignment agreement between the Withdrawing Participant and the Adjusting Participant(s) regarding any such assignments and NCPA shall reflect the change in its Deal Capture System recording the new allocation of Subscription Percentages.

11.2.2 Associated Costs. A Withdrawing Participant shall reimburse NCPA for any and all costs resulting from the withdrawal, including but not limited to the legal, accounting, and administrative costs of winding up and assuring the complete satisfaction and discharge of the Withdrawing Participant's obligations. A Withdrawing Participant will continue to be liable for all Contract Transactions entered into on its behalf, including all Security Deposit requirements set forth in Section 9.4, that are not otherwise assumed by an Adjusting Participant.

11.2.3 No Effect on Prior Liabilities. Withdrawal by any Participant will not terminate any ongoing or un-discharged contingent liabilities or obligations resulting from this Agreement until they are assigned to an Adjusting Participant, or are otherwise satisfied in full, or such Withdrawing Participant has provided a mechanism reasonably acceptable to NCPA and the remaining Participants, for the satisfaction in full thereof.

Section 12. Term and Termination. The Term of this Agreement shall commence on the Effective Date, and shall continue through the end of the then current Fiscal Year plus five (5) years (the "Initial Term"), so the Initial Term of this Agreement is coincident with the Fiscal Year. After the Initial Term has expired, this Agreement shall remain in effect until NCPA terminates this Agreement upon two (2) years' advance written notice to all Participants.

Section 13. Default and Remedies.

13.1 Events of Default. An Event of Default under this Agreement shall exist upon the occurrence of any one or more of the following by a Party in default of its obligations hereunder ("**Defaulting Party**"):

13.1.1 If any Party fails to make any payment or to provide assurances as required pursuant to this Agreement or to a Contract Transaction when due hereunder within two (2) Business Days after receipt of notice given by NCPA of such non-payment; or

13.1.2 The failure of the Defaulting Party to perform any other covenant or obligation under this Agreement where such failure is not cured within ten (10) calendar days following receipt of a notice from NCPA demanding cure (provided that this shall not apply to any failure to make payments (which is covered by Section 13.1.1); or

13.1.3 If any representation or warranty of the Defaulting Party material to the transactions contemplated hereby shall prove to have been incorrect in any material respect when made and the Defaulting Party does not cure the facts underlying such incorrect representation or warranty so that the representation or warranty becomes true and correct within ten (10) calendar days of the date of receipt of notice from any other Party demanding cure; or

13.1.4 If a Participant is in default or in breach of any of its covenants under any other agreement with NCPA and such default or breach is not cured within the time periods specified in such agreement; or

13.1.5 The failure of NCPA to perform any covenant or obligation under this Agreement following a ten (10) calendar day notice to cure by any non-defaulting Participant.

13.2 Cure of an Event of Default. An Event of Default shall be deemed cured only if such default shall be remedied within the time period specified in Section 13.1, above, as may be applicable, after written notice has been sent to the Defaulting Party from NCPA specifying the default and demanding that the same be remedied; provided, however, that failure of a Party to provide such notice shall not be deemed a waiver of such default.

13.3 Participation Rights Of Defaulting Party. Notwithstanding anything herein to the contrary, upon the occurrence of an Event of Default and until such Event of Default is cured, the Participant that is the Defaulting Party shall not have the right to participate under Section 10.2 on any matters with respect to this Agreement.

13.4 Remedies in the Event of Default.

13.4.1 Remedies of NCPA. Upon the occurrence of an Event of Default where a Participant is the Defaulting Party, without limiting its other

rights or remedies available under this Agreement, at law or in equity, and without constituting or resulting in a waiver, release or estoppel of any right, action or cause of action NCPA may have against the Defaulting Party Participant, NCPA may:

- (i) Suspend the provision of services under this Agreement to such Defaulting Party, including the delivery or sale of Approved Products pursuant to any Contract Transactions until the Event of Default is cured; and
- (ii) Demand that the Defaulting Party provide further assurances to compel the correction of the default, including the collection of a surcharge, or such other actions as may be necessary to produce Revenues to secure the cure of the Event of Default; and
- (iii) Terminate this Agreement as to the Defaulting Party, on ten (10) calendar days' prior written notice to the Defaulting Party and following approval of the non-defaulting Participants.

13.4.2 Sale/Transfer of Participants Account Upon Default.

Upon any default of a Participant caused by the failure of such Participant to pay any sums due, and provided that such default is not cured in a timely manner, then NCPA shall use its best efforts to sell and transfer for the Defaulting Party's account all or a portion of the Defaulting Party's Contract Transactions for the remainder of the term of this Agreement.

Notwithstanding that all or any portion of the Defaulting Party's Contract Transactions is so sold or transferred, the Defaulting Party shall remain liable for all of its obligations not otherwise satisfied by the sale or transfer of Defaulting Party's Contract Transactions hereunder unless released therefrom by NCPA upon assumption by a transferee or assignee.

13.4.3 Remedies of Participants. Upon the occurrence of an Event of Default where NCPA is the Defaulting Party, and following the applicable cure periods, the Participants may, without limiting their other rights or remedies available under this Agreement, at law or in equity, and without constituting or resulting in a waiver, release or estoppel of any right, action or cause of action the Participants may have against NCPA, terminate this Agreement in whole, subject to the provisions of Section 13.5.4.

13.4.4 Special Covenants Regarding Security Deposit. In the event that a Participant's Security Deposit balance is insufficient to cover all invoices for costs incurred under this Agreement sent to such Participant, then, without limiting NCPA's other rights or remedies available under this Agreement, at law or in equity, such Participant shall cooperate in good faith with NCPA and shall cure the default as rapidly as possible, on an emergency basis, taking all such action as is necessary, including, but not limited to, raising rates and charges to its customers to increase its Revenues to replenish

its share of the Security Deposit requirements as provided herein, drawing on its cash-on-hand and lines of credit, obtaining further assurances by way of credit support and letters of credit, and taking all such other action as will cure the default with all due haste.

13.5 Effect of Termination or Suspension.

13.5.1 Generally. The suspension or termination of this Agreement will not terminate, waive, or otherwise discharge any ongoing or undischarged contingent liabilities or obligations arising from this Agreement until such obligations are satisfied in full, and all of the costs incurred by NCPA in connection with such suspension or termination, including reasonable attorney fees, the fees and expenses of other experts, including auditors and accountants, other costs and expenses that NCPA is entitled to recover under this Agreement, and other reasonable and necessary costs associated with any and all of the remedies, are paid in full.

13.5.2 Suspension by NCPA. If performance of all or any portion of this Agreement is suspended by NCPA with respect to a Participant in accordance with Section 13.4.1(i), such Participant shall pay any and all costs incurred by NCPA as a result of such suspension including reasonable attorney fees, the fees and expenses of other experts, including auditors and accountants, other reasonable and necessary costs associated

with such suspension and any portion of the MPP Costs that were not recovered from such Participant as a result of such suspension.

13.5.3 Termination by NCPA. If this Agreement is terminated by NCPA with respect to a Participant in accordance with Section 13.4.1(iii), such Participant shall pay any and all costs incurred by NCPA as a result of such termination, including reasonable attorney fees, the fees and expenses of other experts, including auditors and accountants, other reasonable and necessary costs associated with such termination and any portion of the MPP Costs that were not, or will not be, recovered from such Participant as a result of such termination; provided, however, if NCPA terminates this Agreement with respect to the last Participant, then this Agreement shall terminate.

13.5.4 Termination by Participants. If this Agreement is terminated by all Participants in accordance with Section 13.4.3, or by unanimous consent of all of the Parties hereto, then the Participants shall pay to NCPA all previously unpaid MPP Costs incurred as of the date of such termination, and following such termination, the Participants shall cooperate and act in good faith to negotiate and agree upon the method of allocating among the Participants in proportion to their respective Subscription Percentages the costs and benefits of the Contract Transactions, all

Transaction Instruments then in effect, and any financing agreements or

commitments and any matters pertaining to the administration, management, control, operation and maintenance of the Contract Transactions. NCPA shall reasonably cooperate with the Participants in connection with implementing the foregoing and the Participants shall indemnify NCPA for any costs incurred in connection therewith, including reasonable attorney fees, fees and expenses of other experts, including auditors and accountants and other reasonable and necessary costs. If the parties are unable to reach agreement as to the foregoing, then the parties agree to submit the matter to mediation with a mutually agreed upon mediator. If the parties are still unable to reach agreement following mediation, then the matter shall be submitted to binding arbitration subject to the rules of the American Arbitration Association, the costs of such arbitration being borne proportionally among the Participants.

Section 14. Miscellaneous.

14.1 Confidentiality. The Parties will keep confidential all confidential or trade secret information made available to them in connection with this Agreement, to the extent possible, consistent with applicable laws, including the California Public Records Act. It shall be the responsibility of the holder of the claim of confidentiality or trade secret to defend at its expense against any request that such information be disclosed. Confidential or trade secret information shall be marked or expressly identified as such.

14.2 Indemnification and Hold Harmless. Subject to the provisions of Section 14.4, each Participant agrees to indemnify, defend and hold harmless NCPA and its Members, including their respective governing officials, officers, agents, and employees, from and against any and all claims, suits, losses, costs, damages, expenses and liability of any kind or nature, including reasonable attorneys' fees and the costs of litigation, including experts ("Claims"), to the extent caused by any acts, omissions, breach of contract, negligence (active or passive), gross negligence, recklessness, or willful misconduct of a Participant, its governing officials, officers, employees, subcontractors or agents, to the maximum extent permitted by law.

14.3 Several Obligations and Joint Liabilities.

14.3.1 Several Obligations. No Participant shall, in the first instance, be liable under this Agreement for the obligations of any other Participant or for the obligations of NCPA incurred on behalf of other Participants. Each Participant shall be solely responsible and liable for performance of its obligations under this Agreement, except as otherwise provided for herein. The obligation of each Participant under this Agreement is, in the first instance, a several obligation and not a joint obligation with those of the other Participants.

Notwithstanding the foregoing, the Participants acknowledge that any debts or obligations incurred by NCPA under this Agreement on behalf of any of them shall be borne solely by such Participants, and not by non-Participant Members of NCPA, pursuant to Article IV, Section 3(b) of the Joint Powers Agreement.

14.3.2 Joint Liabilities. Notwithstanding the provisions of the Joint Powers Agreement and the general nature of the liabilities in this Agreement as several, the Participants agree that, if a Participant defaults under this Agreement, the non-defaulting Participants will be jointly liable for the obligations of such defaulting Participant in proportion to each non-defaulting Participant's share of the total cost of all outstanding Contract Transactions entered into by all non-defaulting Participants during the five (5) years prior to the date of the default, unless and until NCPA is able to fully recover from the defaulting Participant. Provided, however, that any non-defaulting Participant with no outstanding Contract Transactions for the five (5) years prior the date of the default shall nonetheless have an obligation equal to one-half (1/2) that of the non-defaulting Participant with the lowest outstanding Contract Transactions during such five (5) year period, and that if no non-defaulting Participant has outstanding Contract Transactions during such five (5) year period, then each non-defaulting Participant shall

share the obligation equally. In the event that the date of default occurs within five (5) years of the Effective Date, then such five (5) year period shall be shortened to include the time from the effective date of this Agreement until the date of the default.

14.3.3 Non-Defaulting Participant Rights as to Defaulting Participant. Should NCPA impose joint liability in accordance with Section 14.3.2, this Agreement shall in no way limit, restrict or preclude a non-defaulting Participant from independently seeking equitable contribution, at its sole expense, from any defaulting Participant.

14.4 No Consequential Damages. FOR ANY BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT, THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER DAMAGES OR REMEDIES ARE HEREBY WAIVED. IF NO REMEDY OR MEASURE OF DAMAGE IS EXPRESSLY PROVIDED, THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED TO ACTUAL DAMAGES ONLY AND ALL OTHER DAMAGES AND REMEDIES ARE HEREBY WAIVED. IN NO EVENT SHALL NCPA OR ANY PARTICIPANT OR THEIR RESPECTIVE SUCCESSORS,

ASSIGNS, REPRESENTATIVES, DIRECTORS, OFFICERS, AGENTS, OR

EMPLOYEES BE LIABLE FOR ANY LOST PROFITS, CONSEQUENTIAL, SPECIAL, EXEMPLARY, INDIRECT, PUNITIVE OR INCIDENTAL LOSSES OR DAMAGES, INCLUDING LOSS OF USE, LOSS OF GOODWILL, LOST REVENUES, LOSS OF PROFIT OR LOSS OF CONTRACTS EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NCPA AND EACH PARTICIPANT EACH HEREBY WAIVES SUCH CLAIMS AND RELEASES EACH OTHER AND EACH OF SUCH PERSONS FROM ANY SUCH LIABILITY.

The Parties acknowledge that California Civil Code section 1542 provides that: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor." The Parties waive the provisions of section 1542, or other similar provisions of law, and intend that the waiver and release provided by this section of this Agreement shall be fully enforceable despite its reference to future or unknown claims.

14.5 Amendments.

14.5.1 Amendments in General. Except where this Agreement specifically provides otherwise, this Agreement may be amended only by

written instrument executed by the Parties with the same formality as this Agreement.

14.5.2 Approval and Amendment of Exhibits. Notwithstanding the provisions of Section 14.5.1, any addition to, amendment to or termination of the Exhibits attached hereto shall take effect after being approved by the Commission in a manner consistent with the voting procedures set forth in Section 10.2.3 of this Agreement, without the requirement of an approval of the individual Participants governing body.

14.6 Severability. In the event that any of the terms, covenants or conditions of this Agreement or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by any court having jurisdiction, all other terms, covenants or conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect unless the court holds that such provisions are not severable from all other provisions of this Agreement.

14.7 Governing Law. This Agreement shall be interpreted, governed by, and construed under the laws of the State of California.

14.8 Headings. All indices, titles, subject headings, section titles and similar items are provided for the purpose of convenience and are not intended

to be inclusive, definitive, or affect the meaning of the contents of this Agreement or the scope thereof.

14.9 Notices. Any notice, demand or request required or authorized by this Agreement to be given to any Party shall be in writing, and shall either be personally delivered to a Participant's Designated Representative and the Secretary of the Commission or transmitted to the Participant and the Secretary of the Commission at the address shown on the signature pages hereof. The designation of such address may be changed at any time by written notice given to the Secretary of the Commission who shall thereupon give written notice of such change to each Participant.

14.10 Warranty of Authority. Each Participant, and NCPA, represents and warrants that it has been duly authorized by all requisite approval and action to execute and deliver this Agreement and that this Agreement is a binding, legal, and valid agreement enforceable in accordance with its terms as to the Participant and as to NCPA. Upon execution of this Agreement, each Participant shall deliver to NCPA a resolution of the governing body of such Participant evidencing approval of and authority to enter into this Agreement and an opinion of legal counsel that such authority was duly exercised in accordance with such Participant's Constitutive Documents.

14.11 Counterparts. This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument and as if all the signatories to all of the counterparts had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

14.12 Assignment. Except as provided by Section 11 no Participant may assign or otherwise transfer their interest in their Subscription Percentage, or any other rights and obligations under this Agreement, without the express written consent of NCPA.

14.13 Venue. In the event that a Party brings any action under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Placer or in the United States District Court for the Eastern District of California.

14.14 Attorneys' Fees. If a Party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that Party may be entitled. The court

may set such fees in the same action or in a separate action brought for that purpose.

14.15 Interpretation. Each Party to this Agreement is sophisticated in the operation of its respective Electric System, and in the purchasing and selling of Approved Products. Each Party to this Agreement was represented by counsel during the negotiation of this Agreement. Hence, this Agreement shall be interpreted as being equally drafted by all Parties and without reference to Civil Code Section 1654 requiring interpretation against Parties causing an ambiguity.

14.16 No Third Party Beneficiaries. Nothing contained in this Agreement is intended by the Parties, nor shall any provision of this Agreement be deemed or construed by the Parties or by any third person, to be for the benefit of any Third Party, nor shall any Third Party have any right to enforce any provision of this Agreement or be entitled to damages for any breach by the Parties of any of the provisions of this Agreement.

14.17 List of Exhibits. The Exhibits referenced herein shall be denoted as follows:

Exhibit A: Participant Authorization – Energy

Exhibit A-1: Additional Transaction Terms and Conditions - Energy

Exhibit B: Participant Authorization – RECs

Exhibit B-1: Additional Transaction Terms and Conditions – RECs

Exhibit C: Participant Authorization – Resource Adequacy Capacity

Exhibit C-1: Additional Transaction Terms and Conditions – Resource
Adequacy Capacity

Exhibit D: Participant Authorization – GHG Compliance Instruments

Exhibit D-1: Additional Transaction Terms and Conditions – GHG
Compliance Instruments

Exhibit E: NCPA Commission-Approved Master Agreements

Exhibit F: NCPA Commission-Approved Bilateral Agreements

Exhibit G: NCPA Commission-Approved Exchanges

Exhibit H: NCPA Commission-Approved Auctions

Exhibit I: NCPA Commission-Approved Brokers

Exhibit J: Irrevocable Letter of Direction – Market Purchase Program

IN WITNESS WHEREOF, each Participant has executed this Agreement
with the approval of its governing body, and NCPA has authorized this
Agreement in accordance with the authorization of its Commission.

NORTHERN CALIFORNIA
POWER AGENCY
651 Commerce Drive
Roseville, CA 95678

CITY OF ALAMEDA
2000 Grand Street
Alameda, CA 94501

By: _____
Title: **General Manager**
Date: _____

By: _____
Title: _____
Date: _____

Approved as to form:

Approved as to form:

By: _____
Its: **General Counsel**
Date: _____

By: _____
Its: _____
Date: _____

CITY OF BIGGS
465 "C" Street
Biggs, CA 95917

CITY OF GRIDLEY
685 Kentucky Street
Gridley, CA 95948

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

Approved as to form:

Approved as to form:

By: _____
Its: _____
Date: _____

By: _____
Its: _____
Date: _____

CITY OF HEALDSBURG
401 Grove Street
Healdsburg, CA 95448

CITY OF LODI
221 W. Pine Street
Lodi, CA 95240

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

Approved as to form:

Approved as to form:

By: _____
Its: _____
Date: _____

By: _____
Its: _____
Date: _____

CITY OF LOMPOC
100 Civic Center Plaza
Lompoc, CA 93436

CITY OF UKIAH
300 Seminary Ave.
Ukiah, CA 95482

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

Approved as to form:

Approved as to form:

By: _____
Its: _____
Date: _____

By: _____
Its: _____
Date: _____

EXHIBIT A

PARTICIPANT AUTHORIZATION – ENERGY

The undersigned Participant hereby subscribes to the following Contract Transaction and agrees to transact Energy designated as an Approved Product pursuant to the Amended and Restated Market Purchase Program Agreement and the Transaction Instrument designated below, supplemented and modified as follows:

- (a) Seller:
- (b) Purchaser:
- (c) Period of Delivery: Beginning _____ Ending _____
- (d) Schedule (Days and Hours): _____
- (e) Maximum Delivery Rate: _____
- (f) Delivery Point(s): _____
- (g) Type of Product: _____
- (h) Contract Quantity: _____ MWhrs / MW
- (i) Contract Price: See Attachment A-1
- (j) Transmission Path for the Transaction: _____
- (k) Form of Transaction Instrument: _____
- (l) Special Terms and Exceptions: See Attachment A-1
- (m) Security Deposit Amount Required _____
- (n) Transfer from GOR _____
- (o) Pay by Check or Wire (specify) _____

Except to the extent herein provided for, no amendment or modification to the Agreement shall be enforceable unless reduced to writing and executed by both Parties. Those persons executing this Participant Authorization and the Parties hereby warrant that they are authorized to do so.

Participant

NCPA

By: _____
Designated Representative

By: _____
General Manager

Date: _____

Date: _____

Approved as to Legal Form,
Procedure and Authorization

Approved as to Legal Form

By: _____
Principal Counsel

By: _____
General Counsel

EXHIBIT A-1

ATTACHMENT A-1
ADDITIONAL TRANSACTION TERMS AND CONDITIONS
ENERGY

(Attach Buyer's/Seller's completed Attachment A-1 to the Participant Authorization)

EXHIBIT B

PARTICIPANT AUTHORIZATION – RECs

The undersigned Participant hereby subscribes to the following Contract Transaction and agrees to transact RECs designated as an Approved Product pursuant to the Amended and Restated Market Purchase Program Agreement and the Transaction Instrument designated below, supplemented and modified as follows:

- (a) Seller:
- (b) Purchaser:
- (c) Type of REC: _____
- (d) Applicable Program: _____
- (e) Product Type: _____
- (f) Certifier: _____
- (g) Contract Quantity: _____ MWhrs/ _____ RECs
- (h) Vintage: _____
- (i) Reporting Year: _____
- (j) Renewable Energy Resource (if applicable): _____
- (k) Resource Type (if applicable): _____
- (l) Contract Price: See Attachment B-1
- (m) Delivery Term: Beginning _____ Ending _____
- (n) Alternate Payment Terms: See Attachment B-1
- (o) Allocation of Change in Law Risk: _____
- (p) Delivery Point: _____
- (q) Alternate Title Transfer: _____
- (r) Form of Transaction Instrument: _____
- (s) Special Terms and Exceptions: See Attachment B-1
- (t) Security Deposit Amount Required _____
- (u) Transfer from GOR _____
- (v) Pay by Check or Wire (specify) _____

Except to the extent herein provided for, no amendment or modification to the Agreement shall be enforceable unless reduced to writing and executed by both Parties. Those persons executing this Participant Authorization and the Parties hereby warrant that they are authorized to do so.

Participant

NCPA

By: _____
Designated Representative

By: _____
General Manager

Date: _____

Date: _____

Approved as to Legal Form,
Procedure and Authorization

Approved as to Legal Form

By: _____
Principal Counsel

By: _____
General Counsel

EXHIBIT B-1

ATTACHMENT B-1
ADDITIONAL TRANSACTION TERMS AND CONDITIONS
RECs

(Attach Buyer's/Seller's completed Attachment B-1 to the Participant Authorization)

EXHIBIT C

PARTICIPANT AUTHORIZATION – RESOURCE ADEQUACY CAPACITY

The undersigned Participant hereby subscribes to the following Contract Transaction and agrees to transact Resource Adequacy Capacity designated as an Approved Product pursuant to the Amended and Restated Market Purchase Program Agreement and the Transaction Instrument designated below, supplemented and modified as follows:

- (a) Seller: _____
- (b) Purchaser: _____
- (c) Period of Delivery: Beginning _____ Ending _____
- (d) Contract Quantity NQC: _____ MW
- (e) Resource Name: _____
- (f) CAISO Resource ID: _____
- (g) Resource Type: _____
- (h) Resource Category (if applicable): _____
- (i) Delivery Point(s): _____
- (j) Path 26 (North, South or None): _____
- (k) Local Area/System Capacity: _____
- (l) Deliverability/NQC Restrictions: See Attachment C-1
- (i) Contract Price: See Attachment C-1
- (j) Transmission Path for the Transaction: _____
- (k) Form of Transaction Instrument: _____
- (l) Special Terms and Exceptions: See Attachment C-1
- (m) Security Deposit Amount Required _____
- (n) Transfer from GOR _____
- (o) Pay by Check or Wire (specify) _____

Except to the extent herein provided for, no amendment or modification to the Agreement shall be enforceable unless reduced to writing and executed by both Parties. Those persons executing this Participant Authorization and the Parties hereby warrant that they are authorized to do so.

Participant

NCPA

By: _____
Designated Representative

By: _____
General Manager

Date: _____

Date: _____

Approved as to Legal Form,
Procedure and Authorization

Approved as to Legal Form

By: _____
Principal Counsel

By: _____
General Counsel

EXHIBIT C-1

ATTACHMENT C-1
ADDITIONAL TRANSACTION TERMS AND CONDITIONS
RESOURCE ADEQUACY CAPACITY

(Attach Buyer's/Seller's completed Attachment C-1 to the Participant Authorization)

EXHIBIT D

PARTICIPANT AUTHORIZATION – GHG COMPLIANCE INSTRUMENTS

The undersigned Participant hereby subscribes to the following Contract Transaction and agrees to transact GHG Compliance Instruments designated as an Approved Product pursuant to the Amended and Restated Market Purchase Program Agreement and the Transaction Instrument designated below, supplemented and modified as follows:

- (a) Seller: _____
- (b) Purchaser: _____
- (c) Type of GHG Compliance Instrument: _____
- (d) Applicable Program: _____
- (e) Issuing Body: _____
- (f) Certifier: _____
- (g) Contract Quantity: _____ Compliance Instrument
- (h) Vintage: _____
- (i) Reporting Year: _____
- (j) Source (if applicable): _____
- (k) Resource Type (if applicable): _____
- (l) Contract Price: See Attachment B-1
- (m) Delivery Term: Beginning _____ Ending _____
- (n) Alternate Payment Terms: See Attachment B-1
- (o) Allocation of Change in Law Risk (if applicable): _____
- (p) Delivery Point (if applicable): _____
- (q) Special Terms and Exceptions: See Attachment B-1
- (r) Security Deposit Amount Required: _____
- (s) Transfer from GOR: _____
- (t) Pay by Check or Wire (specify): _____

Except to the extent herein provided for, no amendment or modification to the Agreement shall be enforceable unless reduced to writing and executed by both Parties. Those persons executing this Participant Authorization and the Parties hereby warrant that they are authorized to do so.

Participant

NCPA

By: _____
Designated Representative

By: _____
General Manager

Date: _____

Date: _____

Approved as to Legal Form,
Procedure and Authorization

Approved as to Legal Form

By: _____
Principal Counsel

By: _____
General Counsel

EXHIBIT D-1

ATTACHMENT D-1
ADDITIONAL TRANSACTION TERMS AND CONDITIONS
GHG COMPLIANCE INSTRUMENTS

(Attach Buyer's/Seller's completed Attachment D-1 to the Participant Authorization)

EXHIBIT E

NCPA COMMISSION APPROVED MASTER AGREEMENTS

This Exhibit E contains the list of Commission approved Master Agreements that may properly be used as Transaction Instruments to consummate Contract Transactions pursuant to Section 5.1.1 of this Agreement.

1. EDISON ELECTRIC INSTITUTE (EEI) MASTER POWER PURCHASE & SALE AGREEMENT VERSION 2.1 (MODIFIED 4/25/00); INCLUDING NCPA PREFERRED TERMS
2. WSPP AGREEMENT, AS MOST RECENTLY AMENDED AT THE TIME OF THE TRANSACTION.

EXHIBIT F

NCPA COMMISSION APPROVED BILATERAL AGREEMENTS

This Exhibit F contains the list of Commission approved Bilateral Agreements that may properly be used as Transaction Instruments to consummate Contract Transactions pursuant to Section 5.1.2 of this Agreement.

1. NONE

EXHIBIT G

NCPA COMMISSION APPROVED EXCHANGES

This Exhibit G contains the list of Commission approved Exchanges that may properly be used to consummate Contract Transactions pursuant to Section 5.1.3.

1. NEW YORK MERCANTILE EXCHANGE ("NYMEX")
2. INTERCONTINENTAL EXCHANGE ("ICE")

EXHIBIT H

NCPA COMMISSION APPROVED AUCTIONS

This Exhibit H contains the list of Commission approved Auctions that may properly be used to consummate Contract Transactions pursuant to Section 5.1.4.

1. NONE

EXHIBIT I

NCPA COMMISSION APPROVED BROKERS

This Exhibit I contains the list of Commission approved Brokers that may be used to consummate Contract Transactions.

1. NONE

EXHIBIT J

**IRREVOCABLE LETTER OF DIRECTION
MARKET PURCHASE PROGRAM**

To: Chief Financial Officer, Northern California Power Agency

From: _____
Name of Participant ("Participant")

Subject: IRREVOCABLE LETTER OF DIRECTION

I hereby certify that I have been duly authorized on behalf of Participant's governing body to irrevocably authorize and direct Northern California Power Agency ("NCPA") to pay any and all obligations incurred by NCPA on behalf of Participant, as a Party to the AMENDED AND RESTATED MARKET PURCHASE PROGRAM AGREEMENT, as the same may be amended from time to time, from any funds held by NCPA for such purposes, including any funds held and committed in Participant's General Operating Reserve account as security deposits for such obligations.

Authorized, Approved, and
Directed by: _____ Date: _____
Designated Representative

Approved As to Legal Form, Procedure and Authorization:

_____ Date: _____
Principal Counsel

